IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Kumbalimutt et al.

Application No.: 10/606,999	Confirmation No.: 5124
Filed: June 26, 2003	Art Unit: 2451
For: METHOD AND SYSTEM FOR DISTRIBUTING LOAD BY REDIRECTING TRAFFIC	Examiner: Alan S. Chou

APPLICATION FOR PATENT TERM ADJUSTMENT RECONSIDERATION UNDER 37 C.F.R. § 1.705(B)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant requests reconsideration of the patent term adjustment indicated in the Notice of Allowance of December 16, 2008.[1]

(1)   Applicant is including the fee set forth in 37 C.F.R. § 1.18(e). Please charge any deficiencies or credit any overpayment to our Deposit Account No. 50-0665, under Order No. 418268786US from which the undersigned is authorized to draw.

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[1] Applicant's representative, Maurice Pirio, discussed issues relating to the filing of this Application with Mr. Kery Fries of the U.S.P.T.O. on November 20, 2008. Mr. Fries advised that, since the U.S.P.T.O. is holding applications such as this one in abeyance until issuance of the patent, applicant may wait until the time of issuance and file an application under 37 C.F.R. § 1.705(d), rather than file this Application. (See, also, "Decision Holding PTA Request in Abeyance Until After Issue Date," U.S. Patent Application No. 10/274,829, Jan. 30, 2007.) It appears, however, that there may be some question as to whether the 37 C.F.R. § 1.705(b) requires filing such an application no later than the payment of the issue fee. In an abundance of caution, applicant is therefore filing this Application at the time of paying the issue fee. Applicant apologizes for any inconvenience this may cause.

(2)   <u>Statement of Facts</u>

     (i)   <u>Correct Patent Term Adjustment and Bases for Adjustment</u>

The correct patent term adjustment is 1670 days. The PTO's calculated patent term adjustment is 1215 days. Applicant is entitled to an additional 455 days of patent term adjustment.

The PTO properly accounted for the delay under 35 U.S.C. § 154(b)(1)(A), referred to as the "A delay." The A delay is 1307 days.

The PTO failed to properly account for the delay under 35 U.S.C. § 154(b)(1)(B), referred to as the "B delay." The B delay, assuming that the patent will issue on June 23, 2009,[2] is 1093 days.

The PTO failed to properly account for the overlap under 35 U.S.C. § 154(b)(2)(A) in the A delay and the B delay. The overlap is 638 days.

The PTO properly accounted for the reduction in patent term adjustment under 35 U.S.C. § 154(b)(2)(C). The reduction is 92 days.

The correct patent term adjustment is the sum of the A delay and the B delay minus the overlap and minus the reduction. Thus, the correct patent term adjustment is 1307+1093-638-92, which is 1670 days.

     (ii)   <u>Relevant Dates</u>

A Delay		
Filing Date + 14 months	08/26/2004	↓
First Office Action	03/25/2008	1307
Total		1307

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[2]   The PTO's calculation of patent term adjustment assumed this to be the issue date in the "Determination of Patent Term Adjustment under 35 U.S.C. § 154(b)" that was included with the Notice of Allowance.

B Delay		
Filing Date + 3 years	06/26/2006	↓
Projected Issue Date	06/23/2009	1093
Total		1093

Overlap		
Filing Date + 3 years	06/26/2006	↓
Office Action	03/25/2008	638
Total		638

Reduction		
Office Action	03/25/2008	↓
Reply to Office Action	09/25/2008	92
Total		92

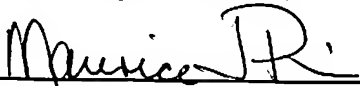(iii)   <u>Terminal Disclaimer</u>

The patent is not subject to a terminal disclaimer.

(iv)   <u>Failure to Engage in Reasonable Efforts</u>

Applicant is not contesting the reduction in patent term adjustment of 92 days as accounted for by the PTO that are "deemed" to be a failure to engage in reasonable efforts under 37 C.F.R. § 1.704. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application under 37 C.F.R. § 1.704.

Dated: January 20, 2009

Respectfully submitted,

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